

HUMAN RESOURCES POLICY
Fauquier County, Virginia

Policy Title: Grievance Procedure
Section No.: 41

Effective Date: 12/16/02
Supersedes Policy: 10/07/97

I. PURPOSE

It is the objective of the Board of Supervisors to provide eligible employees with an expeditious and impartial method for the resolution of employee grievances.

II. Scope

This policy applies to permanent full-time and permanent part-time employees.

III. Definitions

Grievance

A grievance is defined as a complaint or dispute by an employee relating to his/her employment, including, but not necessarily limited to:

1. disciplinary actions, including disciplinary demotions, suspensions, and dismissals provided that such dismissals result from an involuntary resignation or unsatisfactory job performance as imposed under the provisions of County Human Resources Policy.
2. The application of human resources policies, procedures, rules and regulations and the application of ordinances and statutes.
3. Acts of retaliation taken as the result of utilization of this grievance procedure or for participation in the formal grievance (under this grievance procedure) of another County employee.
4. Acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of such law to a governmental authority, or has sought any change in law before the United States Congress or the General Assembly of Virginia.
5. Complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin, or sex.

IV. PROCEDURES

A. Coverage of Personnel

1. All full-time and part-time permanent employees occupying

authorized positions, as approved by the Board of Supervisors, are eligible to file grievances under this procedure with the following exceptions:

- a. Key officials of the county. For purposes of this procedure, a key official is defined as an individual occupying the position of Department Head/Constitutional Officer, Assistant County Administrator, or Deputy County Administrator, provided however, a key official may use this procedure to grieve his/her own dismissal.
- b. Members of boards or commissions.
- c. Employees whose terms of employment are limited by law.
- d. Officials and employees who serve at the will or pleasure of an appointing authority.
- e. Appointees of elected individuals or elected groups.
- f. Probationary employees in matters concerning their dismissal. Probationary employees may, however, use this procedure for complaints or disputes other than dismissals that are determined to be grievable.
- g. Temporary, limited term and seasonal employees.
- h. Those employees who are not required to be covered by Fauquier County general government human resources policies.
- i. After the effective date of the resignation, any employee who has voluntarily resigned his/her position within the County workforce.

2. The County Administrator shall determine the officers and employees (by position title) excluded from this grievance procedure and shall maintain in the Human Resources Department a list of such excluded positions.

B. County Management Rights and Prerogatives

The County reserves the exclusive right to manage the affairs and operations of the County government. Accordingly, complaints involving the following management rights and prerogatives are not grievable:

1. establishment and revision of wages or salaries, position classification or general benefits.
2. Work activity accepted by the employee as a condition of employment, or work activity which may reasonably be expected to be a part of the job content.
3. The contents of ordinances, statutes or established human resources policies, procedures, rules and regulations.
4. The methods, means, and personnel by which work activities are to be carried on, including, but not necessarily limited to:
 - a. the provision of equipment, tools, and facilities necessary to accomplish tasks.
 - b. The scheduling and distribution of manpower/personnel resources.
 - c. Training and career development.
5. The hiring, promotion, transfer, assignment and retention of employees in positions within the County government.
6. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
7. The relief of employees from duties, or taking action as may be necessary to carry out the duties of the County in emergencies.
8. Direction and evaluation of the work of County employees.
9. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in force, or job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance. In any grievance brought under the exception to this paragraph, the action shall be upheld upon a showing by the County that:
 - a. there was a valid business reason for the action, and
 - b. the employee was notified of the reason in writing prior to the effective date of the action.

C. Grievability and Access

1. Determinations of Grievability and Access

- a. Determinations of grievability and access shall be made by the County Administrator.
- b. Only after the County Administrator has determined that a complaint is grievable may a grievance be advanced through Steps 3 and 4 of this procedure.
- c. When the question of grievability or access arises at the department (Step 2) level, the grievant or Department Head/Constitutional Officer may request a ruling by the County Administrator.
- d. The County Administrator shall render a decision within ten (10) calendar days of receipt of the request and shall send a copy of the decision to the grievant, the affected Department Head/Constitutional Officer, and the Human Resources Director.

2. Grievability and Access Determination Appeals

- a. Decisions regarding grievability and/or access to this procedure may be appealed to the Circuit Court of Fauquier County.
- b. The grievant shall make such appeal by filing a notice of appeal with the County Administrator within ten (10) calendar days from the date the grievant received the decision. The grievant shall forward a copy of the notice of appeal to the affected Department Head/Constitutional Officer and the Human Resources Director.
- c. Within ten (10) calendar days after the filing of the notice of appeal, the County Administrator shall transmit to the Clerk of the Circuit Court a copy of the County Administrator's decision on grievability or access to the procedure, a copy of the notice of appeal, and copies of all exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant.
- d. The appeal shall be heard by the Court as provided by law. The decision of the Court is final and is not appealable.

D. Grievance Procedure Process

1. Step 1 – Oral Presentation

- a. An employee who believes he/she has a grievance shall verbally identify the issue with his/her immediate supervisor within twenty (20) calendar days of the incident giving rise to the grievance or within twenty (20) calendar days following the time when the employee reasonably should have gained knowledge of its occurrence.
- b. At this time the grievance is considered informal and need not be submitted or resolved in writing. A formal hearing is not required.
- c. A decision regarding resolution of the grievance by the immediate supervisor shall be reached and communicated, in writing, to the grievant within ten (10) calendar days.

2. Step 2 – Department Head/Constitutional Officer Hearing

- a. If the grievant is not satisfied with and does not accept the Step 1 response, or if the immediate supervisor fails to respond within the required time frame, the grievant may advance to Step 2 of this procedure.
- b. The grievant advances to Step 2 by reducing the grievance to writing on a “Request for Grievance Hearing” form and filing the completed form with his/her immediate supervisor within ten (10) calendar days of receipt of the supervisor’s response or the deadline for that response, whichever occurs first.
- c. The grievant must specify the relief that he/she is seeking through the use of this grievance procedure.
- d. The immediate supervisor shall forward a copy of the completed request form immediately to the affected Department Head/Constitutional Officer with a copy to the Human Resources Director.
- e. The Department Head/Constitutional Officer, or designee, shall meet with the grievant within five (5) calendar days of receipt of the “Request for Grievance Hearing” form. Normally, the only persons who may be present at the meeting shall be the Department Head/Constitutional Officer, or designee; the grievant; and any appropriate witnesses.

- f. The Department Head/Constitutional Officer, or designee, shall render a written response to the grievance within ten (10) calendar days following receipt of the “Request for Grievance Hearing” form. A copy of the response shall be forwarded to the Human Resources Director.

3. Step 3 – County Administrator Hearing

- a. If the grievant is not satisfied with and does not accept the Step 2 written response, or if Department Head/Constitutional Officer, or designee, fails to respond within the required time frame, the grievant may advance to Step 3 of this procedure.
- b. The grievant advances to Step 3 by completing the Step 3 section of the “Request for Grievance Hearing” form and forwarding the completed form to the Human Resources Department within ten (10) calendar days of receipt of the Step 2 response or the deadline for that response, whichever occurs first.
- c. If the County Administrator determines, or has previously determined, that the complaint is grievable, he/she, or his/her designee, shall meet with the grievant along with a representative of the affected department, a representative of the Human Resources Department, appropriate witnesses for each side, and such other persons as he/she deems necessary and appropriate.
- d. The County Administrator, or designee, shall render a written response to the grievance within ten (10) calendar days following receipt of the “Request for Grievance Hearing” form from the Human Resources Department.

4. Step 4 – Grievance Panel

- a. If the grievant is not satisfied with and does not accept the Step 3 written response, or if the County Administrator, or designee, fails to respond within the required time frame, the grievant may advance to Step 4 of this procedure.
- b. The grievant advances to Step 4 by completing the Step 4 section of the “Request for Grievance Hearing” form and forwarding the completed form to the Human Resources Department within ten (10) calendar days of receipt of the Step 3 response or the deadline for that response, whichever occurs first.
- c. The “Request for Grievance Hearing” form must contain the name of the person whom the grievant desires to serve on the grievance

panel.

E. Rules Governing the Conduct of Grievance Hearings

Except as otherwise noted, the following rules apply to all levels of grievance hearings.

1. Role of the Human Resources Director

- a. The Human Resources Director, or designee, shall advise both employees and supervisors in matters concerning this grievance procedure.
- b. Where a grievant appeals to Step 3 or Step 4, the Human Resources Director, or designee, shall transmit the grievance record to the hearing officer or grievance panel at the next higher level.
- c. During Step 3 and Step 4 hearings, the Human Resources Director, or designee, shall serve the hearing officer or grievance panel as facilitator and advisor on personnel-related matters.
- d. Neither the Human Resources Director or his/her designee shall be present during the grievance panel's private deliberations and decision-making process.
- e. Neither the Human Resources Director nor any member of the Human Resources Department shall serve as a hearing officer for Step 3 hearings or as a member of a grievance panel for Step 4 hearings.

2. Timelines, Deadlines, and Hours for Holding Grievances

- a. Time intervals specified in Steps 1 through 4 may be extended by mutual consent of the parties.
- b. When a deadline falls on Saturday, Sunday, or a County holiday, the next calendar day that is not a Saturday, Sunday, or a County holiday shall be considered the last calendar day.
- c. As far as practical, all grievance hearings shall be held during normal County working hours as defined by the Fauquier County Human Resources Policy manual.

3. Participants in the Process

- a. At the Step 3 hearing, the grievant, at his/her option, may have present representatives of his/her choice. If the grievant is represented by legal counsel, the County likewise has the option of being represented by counsel.
 - b. County employees who are necessary participants at grievance hearings shall not lose pay for time lost from their jobs and shall not be charged leave because of attendance at such hearings.
 - c. At Steps 3 and 4, the hearing officer or the grievance panel shall have the discretion to limit the attendance at the hearing to those who have a direct interest in the hearing.
- 4. Recording Devices
 - a. The use of recording devices or a court reporter is not permitted at Step 1, 2, or 3 hearings.
 - b. Only Step 4 hearings may be recorded.
 - c. Where a Step 4 hearing is recorded, it shall be the responsibility of the Human Resources Director, or designee, to make the recording. There shall be no other recording permitted.
 - d. If the grievant desires a transcript of the hearing, he/she shall bear the costs thereof.
- 5. Hearing Protocol
 - a. Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.
 - b. At the request of either party, Step 3 and Step 4 hearings shall be private.
 - c. Except in cases involving discipline or in cases where the hearing officer or the grievance panel determines otherwise, the grievant shall present his/her evidence first.
 - d. The hearing officer or grievance panel shall determine the propriety of and the weight to be given the evidence submitted.
 - e. Both the grievant and the County may call appropriate witnesses. All witnesses including the grievant shall be subject to examination and cross-examination.

- f. Witnesses shall be present only while actually giving testimony.

6. Relief

- a. The grievant shall not be entitled to recover more than that which he/she has requested and in any event no more than that which he/she has lost.
- b. Where a grievant has obtained partial relief at one level of this grievance procedure but decides to appeal to the next higher level, the filing of a "Request for Grievance Hearing" form to the next higher level shall constitute a rejection and relinquishment of any claim to any and all relief granted at the previous level.

7. Expenses

Each party shall bear the costs and expenses, if any, of his/her legal counsel or representative.

F. Rules Governing the Conduct of Grievance Panels and Panel Hearings

1. Selection of Grievance Panel

- a. Within ten (10) calendar days of receipt of the Step 4 portion of the "Request for Grievance Hearing" form, the County Administrator, or designee, shall appoint a member to serve on the grievance panel; the grievant shall appoint a member to serve on the grievance panel; and these two panel members shall jointly select a third member who shall serve as the panel chair.
- b. In the event that the parties are unable to agree upon a third panel member, the parties may by agreement request that the third panelist be appointed from the list of administrative hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia. In the event that the parties do not agree to this procedure, the third panelist shall be appointed by the Chief Judge of the Circuit Court of Fauquier County.

2. Eligibility to Serve on a Grievance Panel

The individuals serving as panel members:

- a. shall not be composed of any persons having direct

involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance.

- b. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members:
 - b1. spouse,
 - b2. parent,
 - b3. child,
 - b4. descendants of a child,
 - b5. sibling,
 - b6. niece,
 - b7. nephew, and
 - b.8. first cousin.
- c. No attorney having direct involvement with the subject matter of the grievance nor a partner, associate, or employee of the attorney shall serve as a panel member.

G. Panel Hearing Protocol

1. Hearing Date, Time, and Location

The panel chairman shall promptly set the date, time, and location for hearing the grievance and shall notify the parties.

2. Grievance Record and Associated Documentation

- a. The Human Resources Director shall provide the panel with copies of the grievance record prior to the hearing, and shall provide the grievant with a list of the documents furnished to the panel.
- b. At the request of the grievant, at least ten (10) calendar days prior to the scheduled panel hearing, the grievant and his/her attorney shall be allowed access to and copies of all

relevant files intended by the County to be used by it at the panel hearing.

- c. The grievant shall furnish to the County copies of all documents, exhibits, and a list of witnesses that he/she intends to use at the panel hearing seven (7) calendar days in advance of the hearing. Three calendar (3) days after receiving these items from the grievant, the County shall furnish to the grievant copies of the same.

3. Representation

Both the grievant and the County may be represented by legal counsel or other representative at the panel hearing. Such representative may examine, cross-examine, question, and present evidence on behalf of the grievant or the County before the panel without being in violation of the provisions of Virginia Code Section 54.1-3904.

4. Evidence

- a. The panel shall have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as full and equal opportunity is afforded to all parties of the presentation of their evidence.
- b. All evidence shall be presented in the presence of the panel and the parties except by mutual consent of the parties.

5. Panel Authority to Award

- a. The panel shall have the authority, if it finds based on the greater weight of the evidence that the grievant has been denied a benefit or wrongly disciplined without just cause (where such cause is required), to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee to his/her former position with back pay.
- b. Back pay shall not exceed pay for time actually lost due to such suspension or discharge.
- c. Any award of back pay shall be offset by interim earnings the grievant earned during the period of separation.

- d. The panel has the authority to sustain the County's action.

6. Panel Award Limitations

- a. The panel shall not have authority to do any of the following:
 - 1. formulate policies or procedures;
 - 2. alter existing policies or procedures;
 - 3. circumscribe or modify the rights of the County as outlined in this procedure;
 - 4. exonerate an employee from all discipline when the guilt of the employee is admitted or is beyond question in the view of the panel;
 - 5. grant relief greater than that which the grievant has requested in the "Request for Grievance Hearing" form.

7. Panel Decision

- a. The decision of the panel should be rendered as soon as possible, but in any case, not later than five (5) calendar days following the conclusion of the hearing.
- b. The majority decision of the panel, acting within the scope of its authority, shall be final and binding, subject to existing policies, procedures and law.
- c. The question of whether the relief granted by a panel is consistent with written policy shall be determined by the County Administrator or his/her designee except if he/she has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney for the County of Fauquier.
- d. Either party may petition the Circuit Court of Fauquier County for an order requiring implementation of the panel decision.

8. Expenses

- a. The grievant shall bear the reasonable costs and expenses, if any, of his/her panel member.

- b. The County shall bear the reasonable costs and expenses, if any, of its panel member and those of the third panel member unless the grievant objects. Upon objection, the reasonable costs and expenses of the third panel member shall be shared equally between the County and the grievant.
- c. No person shall receive any compensation, whether monetary or otherwise, for his/her time in serving as a member of a grievance panel. Notwithstanding this prohibition, a County employee serving as a member of a grievance panel may receive his/her usual County salary for the period he/she serves on such panel.

H. Compliance

- 1. After the initial filing of a “Request for Grievance Hearing” form, failure of either party to comply with all substantial procedural requirements of this procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) working days of receipt of written notification by the other party of the noncompliance.
- 2. Such written notification by the grievant shall be made to the County Administrator or his/her designee.
- 3. The County Administrator or his/her designee shall determine compliance issues. The County Administrator or his/her designee, at his/her option, may require a written explanation of the basis for just cause extension or exceptions.
- 4. Compliance determinations made by the County Administrator or his/her designee shall be subject to judicial review which shall be initiated by the grievant filing a petition with the Circuit Court of Fauquier within thirty (30) calendar days of the compliance determination.

I. Voluntary Mediation

- a. Voluntary mediation is offered as an alternative means to addressing and resolving workplace disputes. Mediation is available to all County government employees, including those in probationary status, and is independent of any grievance rights an employee may have.

- b. The Employee Mediation Program is a means by which a neutral third party assists employees and management experiencing conflict in discussing issues in an open, honest and confidential forum to arrive at a mutually satisfactory agreement.
- c. The Human Resources Director, or his/her designee, functions as the Program Coordinator and oversees the County's Employee Mediation Program. All requests for mediation must be referred to the Program Coordinator.